

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579**

**IN THE MATTER OF THE CLAIM OF**

**FRANK McNENNEY AND  
VIRGINIA Q. McNENNEY**

**Claim No. CU -3752**

**Decision No. CU    4941**

**Under the International Claims Settlement  
Act of 1949, as amended**

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by FRANK McNENNEY and VIRGINIA Q. McNENNEY in the amended amount of \$238,130.00 based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimants have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967, (FCSC Reg., 45 C.F.R. See 531.1(d) (Supp. 1967)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g))

No claim was filed with this Commission by or on behalf of claimants within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning their asserted loss.

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) This is such a claim. Under the Community Property Law of Cuba VIRGINIA Q. MCNENNEY has an interest in the properties subject of this claim.

Claimants describe their losses as follows:

1. Home in Miramar, Havana	\$ 53,000.00
Furnishings	30,260.00
2. Home in Varadero Beach, Matanzas	\$ 56,500.00
Furnishings	4,070.00
3. Residence in Almendares, Havana	\$ 70,000.00
4. Two dental offices, including	
Furnishings, Havana	\$ 24,300.00
	<u>\$238,130.00</u>

Based upon the entire record, including reports from abroad and claimants' affidavits the Commission finds that claimants owned the real and personal property subject of this claim.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Following Chapter VI of the law appears a section entitled "Temporary Provisions" and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Claimants state that they left Cuba on January 4, 1962, and that their real and personal property in Cuba were taken when they left.

Based on the foregoing and the evidence of record, the Commission finds that claimants' real properties in Cuba were taken by the Government of Cuba on January 4, 1962 pursuant to the provisions of the Urban Reform Law. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) The Commission further finds that the furnishings and equipment therein were taken at the same time.

On December 6, 1961, the Cuban Government published its Law 989 which effected confiscation of all assets, personal property and real estate,

rights, shares, stocks, bonds and securities of persons who had left the country.

The Commission finds, in the absence of evidence to the contrary, that the equipment of the dental offices was taken by the Government of Cuba on January 4, 1962 pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

Residence in Miramar, Havana

This property at 303 26th Street between 5th Avenue and 3rd Avenue is described as a brick and stucco house with Spanish tiled roof and floors, having about 13 rooms, a two car garage and usual facilities, and located on a plot of 1,500 square yards. The claimants state that they purchased the land and built the house for cash in 1938 and 1939. They have valued the land at \$18,000 and the building at \$35,000.

Claimant has submitted no evidence in support of the asserted value. However, a report from abroad states that the property had a value of \$60,000.00 and was encumbered by a mortgage of \$30,000.00 to the Pan American Life Insurance Company. Claimant, FRANK McNENNEY, states that he was required to pay the balance of this mortgage before departing from Cuba, but has no documents or other evidence to establish that this mortgage was satisfied.

Based on the record, and evidence available to the Commission regarding the value of similar properties in Miramar, Havana, the Commission finds that on January 4, 1962, the date of loss, the house and lot, not including the personalty, had a value of \$60,000.00. The Commission is constrained to hold, however, that claimants have not established by

probative evidence that the \$30,000.00 mortgage encumbering this property was satisfied. Accordingly the Commission finds that claimants had an equity in this property of \$30,000.00.

Residence in Varadero Beach, Matanzas

This property is described as including a house constructed of concrete slabs and concrete block for exterior walls and partitions with Spanish tile on the floors and stucco on concrete ceilings, having about 14 rooms, a two car carport, and usual facilities, and located on a plot of 900 square meters. Claimants state that they purchased the land and built the house for cash in 1957 and 1958. They have asserted that the land had a value of \$8,500 and the house a value of \$48,000.

Based on the record, including a report from abroad and evidence available to the Commission as to the value of similar properties in Matanzas, the Commission finds that the value of this property, not including the personalty, on the date of loss was \$45,000.00.

Residence in Almendares

This house located at 9th Street is described as a two story two unit family building constructed of square shaped concrete slabs and brick for exterior walls and partitions with Spanish tile on the floors and stucco on concrete ceilings, having about seven rooms on each floor, and located on a plot of about 1350 square meters. In addition it is stated that the property included a two-car, two-story garage separate from the house and constructed of brick and stucco walls with Spanish tile on roof and floors and having a chauffeur's bedroom and bath on the first floor and two bedrooms on the second floor. Claimant, FRANK A. McNENNEY states that he acquired this property from his father on May 29, 1953 and that thereafter in 1956 it was rebuilt at a cost of \$25,000.00.

based on the record including a report from abroad the Commission finds that the value of this improved real property on the date of loss was \$45,000.00.

Personalty

With regard to the portion of this claim based upon the loss of personalty in the two residences subject of this claim, and including the equipment and furnishings in the two dental offices in Havana, Cuba, the Commission has considered claimants' listings and finds the asserted values fair and reasonable, as follows:

1. Furnishings in residence in Miramar	\$30,260.00
2. Furnishings in residence in Varadero	4,070.00
3. Equipment and furnishings in 2 dental offices	<u>24,300.00</u>
	\$58,630.00

Accordingly, the Commission concludes that claimants suffered a loss in the aggregate amount of \$178,630.00 within the meaning of Title V of the Act, as the result of the taking of their property by the Government of Cuba on January 4, 1962, summarized as follows:

1. Equity in residence in Miramar	\$ 30,000.00
Personalty therein	30,260.00
2. Residence in Varadero	45,000.00
Personalty therein	4,070.00
3. Residence in Almendares	45,000.00
4. Equipment and furnishings in 2 dental offices	<u>24,300.00</u>
	\$178,630.00

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

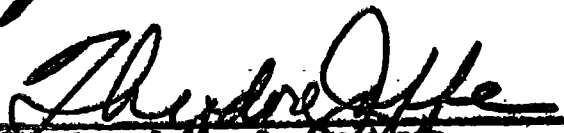
The Commission certifies that FRANK McNENNEY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-Nine Thousand Three Hundred Fifteen Dollars (\$89,315.00) with interest at 6% per annum from January 4, 1962; and

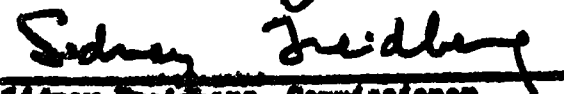
The Commission certifies that VIRGINIA Q. McNENNEY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-Nine Thousand Three Hundred Fifteen Dollars (\$89,315.00) with interest at 6% per annum from January 4, 1962.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

JUN 3 1970

  
Lyda S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freiberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)